

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3142 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

@

OSATWAL PROCESSORS PVT. LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 3142 of 1999
MR PARESH M DAVE for Petitioner No. 1-2
(MR AKSHAY H MEHTA) for Respondent No. 1
MR RJ OZA for Respondent No. 1,2-3
MR ASIM J PANDYA for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 29/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

Rule. Mr. Asim Pandya waives service on behalf of the respondent no.1.

When this petition is called out our attention is drawn to the decision of the Supreme Court in Commissioner of Central Excise, Coimbatore Vs. Elgi Equipments Ltd., reported in 2001 (42) RLT 974 (SC), in which it has been held that Section 11AC of the Central Excise Act, 1944 was prospective in operation and penalty was not leviable in respect of illegality committed prior to insertion of the said provision. In the present case, illegality is said to have been committed somewhere in March, 1996 while the said provision came into force from 28th September, 1996. In the impugned order dated 19th April, 1999, the Commissioner (A) has directed the petitioners to deposit Rs.4,76,638/- by 30th April, 1999 and furnish proof of the deposit by 5th May, 1999. The deposit of penalties by the Director, Clerk and Excise Clerk have been waived till the disposal of the appeal. The learned Counsel appearing for both the sides state that the amount of Rs.4,76,638/- has already been deposited by the petitioners towards the duty amount determined by the Additional Commissioner of Central Excise. Since the duty amount has already been deposited and Section 11AC of the said Act has no retrospective effect as held by the Supreme Court in Elgi's case, the Commissioner will now hear the appeal of the petitioners on merits without insisting on the payment of the penalty amount. Rule is made absolute accordingly with no orders as to costs.

(R.K.Abichandani,J.)

(Kundan Singh, J.)
stanley-akt.